

The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DEJAVUAI, INC., a Washington corporation,

Plaintiff/Counter-
Defendant,

v.

FYODOR “TED” KAPUSTIN aka FYDOR
“TED” KAPUSTINE, an individual,,

Defendant/Counter-
Plaintiff.

No. 2:25-cv-00915

DEJAVUAI’S REPLY IN SUPPORT OF
MOTION TO COMPEL ARBITRATION
AND STAY CERTAIN CLAIMS

ARGUMENT ON REPLY

On June 27, 2025, Plaintiff/Counter-Defendant DejaVuAI, Inc. (“DejaVuAI”) filed a Motion to Compel Arbitration and Stay Certain Claims (the “Motion”), Dkt 37, in lieu of an answer to Defendant/Counter-Plaintiff Fyodor Kapustin’s Answer and Counterclaim, Dkt 28. The Motion requested that the Court stay proceedings on Mr. Kapustin’s Counterclaim (Unjust Enrichment) and Counts III (Breach of Proprietary Information and Invention Assignment Agreement (“PIIAA”)) and V (Misappropriation of Trade Secrets) and compel the parties to arbitrate these claims pursuant to the mandatory arbitration clause in § 10(a) of the PIIAA. *See* Declaration of Johnny Kessler, Ex. D, Dkt 38-4 at 6.

DejaVuAI noted the present Motion for consideration on July 25, 2025, in compliance with the Local Civil Rules. LCR 7(d)(4). The Rules further required Mr. Kapustin to file and serve
DEJAVUAI’S REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION
AND STAY CERTAIN CLAIMS
CASE NUMBER 2:25-CV-00915 - 1

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: +1 206 623 7580
FACSIMILE: +1 206 623 7022

1 opposition papers no later than July 18, 2025. *Id.* (“Any opposition papers shall be filed and
 2 received by the moving party no later than 21 days after the filing date of the motion.”). Mr.
 3 Kapustin did not file or serve opposition papers by that deadline.

4 Pursuant to LCR 7(b)(2), “if a party fails to file papers in opposition to a motion, such
 5 failure may be considered by the court as an admission that the motion has merit.” DejaVuAI,
 6 accordingly, submits that the Court should grant the present Motion.

7 It is now apparent, however, that an interaction of procedural rules and prior rulings will
 8 result in the present Motion becoming ripe for decision before the currently pending preliminary
 9 injunction proceedings are resolved.¹ Because the preliminary injunction involves issues and a
 10 claim that would be stayed upon entry of an order granting the present Motion, DejaVuAI
 11 respectfully requests that the Court grant the Motion but hold its ruling in abeyance until all
 12 requests for preliminary relief are definitively resolved.

13 CONCLUSION

14 For the foregoing reasons and those in the Motion to Compel Arbitration and Stay Certain
 15 Claims, DejaVuAI respectfully requests that, upon resolution of the pending preliminary
 16 injunction proceeding and confirmation from the parties that no further requests for preliminary
 17 relief are anticipated, the Court stay and compel arbitration on Mr. Kapustin’s Counterclaim and
 18 Counts III and V of DejaVuAI’s Complaint.

19
 20
 21 ¹ DejaVuAI could not wait to move to compel arbitration until preliminary relief questions were definitively resolved
 22 because Mr. Kapustin’s Answer and Counterclaim triggered a 21-day deadline for DejaVuAI to file a responsive
 23 pleading or motion, *see* Fed. R. Civ. P. 12(a)(1)(B), and DejaVuAI would risk waiving its arbitration rights if it filed
 24 a substantive answer or otherwise litigated the merits of the arbitrable counterclaim. *See Armstrong v. Michaels Stores,*
 25 *Inc.*, 59 F.4th 1011, 1015 (9th Cir. 2023) (a party generally waives a known right to mandatory arbitration “when it
 26 (1) makes an intentional decision not to move to compel arbitration and (2) actively litigates the merits of a case for a
 prolonged period of time”). After he filed his Answer and Counterclaim, Mr. Kapustin obtained a 30-day extension
 of his deadline to respond to the Court’s order to show cause regarding converting its Temporary Restraining Order
 into a preliminary injunction. Minute Order, Dkt 33. Mr. Kapustin’s new deadline fell several weeks after DejaVuAI’s
 deadline to file the present Motion in response to his Counterclaim, which resulted in DejaVuAI’s request to stay
 proceedings on certain claims becoming ripe for decision while its request that Mr. Kapustin be preliminarily enjoined
 based on one of those claims remained pending.

1 DATED this 25th day of July, 2025

2 Respectfully submitted,

3 K&L GATES LLP

4
5 By: /s/ Spencer McCandless

6 John T. Bender, WSBA # 49658

7 Spencer McCandless, WSBA # 60871

8 925 Fourth Avenue

9 Suite 2900

10 Seattle, Washington 98104-1158

11 Tel: +1 206 623 7580

12 Fax: +1 206 623 7022

13 Email: John.Bender@klgates.com

14 Spencer.McCandless@klgates.com

15 *Attorneys for Plaintiff/Counter-Defendant*
16 *DejaVuAI, Inc.*

CERTIFICATE OF SERVICE

I certify that on this date I arranged for a copy of the foregoing document to be served on the parties listed below as indicated:

VIA ELECTRONIC COURT SERVICE

Zizhou Wang
Xinyuan Zhang
Shanze Partners PLLC
701 5th Ave, Suite 4200
Seattle, WA 98104

*Attorneys for
Defendant/Counter-Plaintiff
Fyodor Kapustin*

DATED this 25th day of July, 2025.

Respectfully submitted,

K&L GATES LLP

By: /s/ Spencer McCandless
Spencer McCandless
925 Fourth Avenue
Suite 2900
Seattle, Washington 98104-1158
Tel: +1 206 623 7580
Fax: +1 206 623 7022
Email: Spencer.McCandless@klgates.com

*Attorney for Plaintiff/Counter-Defendant
DejaVuAI, Inc.*